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Vermont Rep. Peter Welch has thrown his weight behind New Hampshire hospitals in their fight against the state over Medicaid.

In a letter sent Monday to Cindy Mann, the director of the Centers for Medicare & Medicaid Services, Welch said he was worried about how the "growing instability in New Hampshire's health care delivery system" would impact Vermonters. That instability stems, in part, by reductions in the reimbursements New Hampshire pays to hospitals for uncompensated care.

Forty percent of patients at Dartmouth-Hitchcock Medical Center are Vermonters, as are 40 percent of DHMC employees, according to Welch. Consequently, as DHMC and other providers trim their workforces and cut services, the impact would be felt on both sides of the Connecticut River, Welch said.

In recent months, DHMC has laid off at least 50 employees and lost another 291 through an early retirement program. Other New Hampshire hospitals have cut hundreds of workers in response to state budget cuts, and Laconia-based Lakes Regional General Hospital network -- LRGHealthcare -- last month refused care to 3,500 Medicaid recipients

In a telephone interview yesterday, Welch elaborated on what he saw as a critical problem facing the region. A Hartland resident, Welch said he is keenly aware of the importance that Dartmouth-Hitchcock plays in Vermont, both as an employer and health care provider.

"The stability and sustainability of Dartmouth-Hitchcock is of vital importance to Vermont workers," Welch said. "The river does divide us... but the people who are sick don't respect that as a barrier and there are people who work (in New Hampshire)."

Welch met last week with DHMC officials to discuss the problems in New Hampshire and consequences for Vermonters, said Frank McDougall, vice president of government affairs at

DHMC.

McDougall said he was pleased that Welch brought his concerns to Mann.

"We applaud Congressman Welch for showing his concern over this untenable situation that's having disastrous consequences," McDougall said yesterday.

Welch was unsure what, if any, impact his letter would have, but he said he wanted to make clear to federal regulators the importance of the issue.

Mann's agency is in charge of reviewing and approving changes to state Medicaid programs. It could pull back the federal funds New Hampshire receives for Medicaid, but such drastic action is unlikely, according to Roseanne Pawelec, a CMS spokeswoman.

"If we found that New Hampshire's plan was not in compliance with federal law, we would work with the state to bring the plan into compliance," Pawelec said in an email. "In general terms, we almost always are able to work out issues with a state and avoid withholding of federal funds."

McDougall, a Quechee resident and former secretary of commerce for two Vermont governors, said that he "has some disappointment with the governor's office and with the congressional delegation in New Hampshire that they have not been as active in getting CMS to intervene."

New Hampshire's congressional delegation has remained largely silent on the conflict between the hospitals and the state. An aide from Sen. Jeanne Shaheen attended a meeting in late October between hospital officials and Mann, McDougall said. So far, however, Shaheen has not taken a public stance supporting either side.

"As a former governor, Senator Shaheen understands the difficult reality of budget constraints, particularly in tough economic times" said spokeswoman Faryl Ury in an email to the Valley News. "Our office has been in contact with both the hospitals and the Governor's office on this

issue and hope that it can be resolved in a way that ensures Medicaid patients have access to healthcare and that providers don't have to close their doors."

Welch's letter comes as a federal judge considers whether to throw out a lawsuit that 10 of New Hampshire's largest hospitals, including DHMC, have brought against the state over how New Hampshire reimburses providers for uncompensated care.

The 10 hospitals expect to provide more than \$131 million worth of medical care for patients who can't afford to pay this year, according to the lawsuit. In addition, the hospitals will pay nearly \$135 million in a Medicaid enhancement tax that the state uses to leverage more federal funding, bringing the total financial impact to \$266 million. The tax is 5.5 percent on a hospital's patient revenues.

In the past, the tax was returned to hospitals, essentially making it a financial wash. But this year, because of budget constraints, New Hampshire's Legislature said it could no longer promise large hospitals that they would receive back the money they paid. Smaller "critical access" hospitals would be covered first and, if there is money left over, it would be distributed among the largest providers.

At DHMC alone, Medicaid has amounted to about a \$100 million annual financial cost.

In federal district court last week, the state argued that hospitals have no recourse because the law does not allow the state's reimbursement rates to be challenged. U.S. District Court Judge Steven McAuliffe expressed some skepticism about that claim during Thursday's hearing.

"The hospitals have no recourse? There's no court they can be heard in?" McAuliffe said during the hearing, according to the Concord Monitor. "That just seems to be an odd perception."

McAuliffe has not yet ruled on the case. Attorney Scott O'Connell, who is representing the hospitals, said he left last week's hearing feeling confident.

"We feel good," O'Connell said yesterday. "We walked out of their feeling like we had a good discussion on some important issues."

The New Hampshire lawsuit is similar to one in California that was argued before the U.S. Supreme Court earlier this year.

The Supreme Court case, Douglas v. Independent Living Center of Southern California, is a consolidation of three cases filed in reaction to proposed cuts in California's Medicaid payment disbursements.

At issue is whether private parties have the legal standing to challenge state Medicaid cuts under the "supremacy clause" of the Constitution, which says that federal law trumps state law when the two are in conflict.

The supremacy clause question is central to the case in New Hampshire, as well. The Supreme Court likely won't rule on the California case until well into next year.

McAuliffe expressed some uncertainty as to how to proceed, given that the Supreme Court ruling could have implications for the New Hampshire case, O'Connell said.

Obviously, hospitals believe that existing law gives them recourse, O'Connell said. Until that changes, the case should move forward. A hearing is scheduled for Jan. 10.

"Apply the law that exists," O'Connell said.